

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 303 of 2006**

1. Kishore Kumar, Son of Shri Aalopi Prasad, aged about 26 years;
Occupation Businessman;
2. Raju @ Ramgopal, Son of Shri Pyarelal, aged about 38 years,
Occupation Businessman;
3. Ashok Kumar, Son of Shri Aalopi Prasad, aged about 25 years,
Occupation Businessman;
4. Mahesh Kumar, Son of Shri Aalopi Prasad, aged about 21 years;
Occupation Student;
5. Pyarelal, Son of Shri Raghunath, aged about 71 years; Occupation
Businessman;

All residents are Geetanagar, Choubey Colony, Raipur, Police Station
Saraswati Nagar, Raipur, (C.G.)

---- Appellants

Versus

- State of Chhattisgarh Through : The Police Station Saraswati Nagar,
Chhattisgarh.

---- Respondent

For Appellants	:	Mr. Uttam Pandey, Advocate.
For Respondent/State	:	Smt. Dipti Shukla, P.L.

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

15/02/2021

1. With the consent of both the parties, the matter is heard finally.
2. This appeal has been preferred against the judgment dated 03/04/2006 passed in Sessions Trial No.91/2005 by the Sessions Judge, Raipur, District – Raipur, (C.G.), whereby the appellants have been convicted under Sections 452 r/w Section 149 of Indian Penal Code and Section 323 r/w Section 149 of Indian Penal Code and sentenced to undergo R.I. for 2 years with fine of Rs.1,000/- and R.I. for 6 months with fine of Rs.500/- respectively, with default stipulations.
3. Vide order dated 27/1/2016, appeal has already been abated with respect to appellant No.5 Pyarelal, S/o Shri Raghunath.
4. According to the case of prosecution, on 31/08/2003 at around 11:45 am, the appellants entered in the shop of complainant Rakesh Kumar Prajapati and assaulted him, his mother Tara Bai and his father Ganesh Prajapati due to some previous dispute. Matter was reported by complainant Rakesh. Statement of the witnesses under Section 161 of Cr.P.C. were recorded. After completion of investigation, a charge-sheet was filed. The Trial Court framed charges. To prove guilt of the accused/appellant, the prosecution has examined as many as 10 prosecution witnesses. No defence witness has been examined. Statement of the appellants under Section 313 of the Cr.P.C have been recorded, wherein they have pleaded innocence and false implication.
5. After trial, the trial Court has convicted and sentenced the appellants as mentioned in paragraph one of this judgment. Hence, this appeal.
6. Learned Counsel appearing for the appellants submits that during

pendency of this appeal, a compromise has taken place between both the parties and an application in this regard has also been filed. Statement of the appellants and complainant Rakesh have also been recorded. One injured person i.e. Ganesh Prajapati has already died during pendency of this appeal. Though the statement of Tara Bai i.e. mother of the complainant has not been recorded, the Compromise application is duly signed by her.

7. Perused the compromise application which is duly signed by the parties. Since, offence under Section 452 r/w 149 of the I.P.C. is not compoundable, and offence under Section 323 r/w 149 of the I.P.C. is compoundable, the application is allowed only for the offence punishable under Section 323 r/w 149 of the I.P.C. Resultantly, the appellants are acquitted of the charge framed under Section 323 r/w 149 of the I.P.C.
8. Shri Uttam Pandey, learned Counsel appearing for the appellants submits that with regard to the conviction under Section 452 r/w 149 of the I.P.C., he does not want to press this appeal on merits and confines his argument to the sentence part only. He further submits that both the parties have settled their dispute and they have no grievance against each other. Appellants are facing the *lis* for the last 15-16 years and they have no criminal antecedent. He further submits that appellant No. 1 Kishore Kumar and appellant No.2 Raju @ Ramgopal have remained in jail for 6 days. They have also deposited the fine amount imposed upon them by the trial Court. Therefore, it is prayed that the jail sentence awarded to appellants No.1 & 2 may be reduced to the period already undergone by them. With regard to appellant No.3 namely Ashok Kumar and appellant No.4 namely Mahesh Kumar, learned Counsel submits that

though they have not remained in jail, they have deposited the fine amount imposed upon them by the trial Court. Therefore, it is prayed that they may be sentenced with fine only.

9. Per contra, learned Counsel appearing for the State opposes the argument advanced by the Counsel appearing for the appellants. He further submits that the offence under Section 452 r/w 149 of the I.P.C. is punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
10. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
11. Considering the above facts and circumstances of the case, particularly, considering that both the parties have settled their dispute, they have no grievance against each other, the appellants are facing the *lis* for the last 15-16 years, they have no criminal antecedent, appellant No. 1 Kishore Kumar and appellant No.2 Raju @ Ramgopal have remained in jail for 6 days, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon them, the jail sentence awarded to them is reduced to the period already undergone by them. Ordered accordingly. Their fine sentence is affirmed.
12. With regard to appellant No.3 Ashok Kumar and appellant No.4 Mahesh Kumar, considering the fact that they are also facing the *lis* for the last 15-16 years, they have deposited the fine amount imposed upon them and compromise has also been taken place between the parties, I deem it proper to sentence appellants No.3 & 4 with till rising of the Court. Ordered accordingly. Both are directed to appear/surrender before the trial Court on 22/3/2021 for undergoing the sentence of till rising of the

Court. Their fine sentence is enhanced from Rs.1,000/- to Rs.2,000/- which shall be payable by 19/3/2021. In default of payment of the enhanced amount of fine, both shall be liable to undergo simple imprisonment for one month.

13. Consequently, the appeal is partly allowed to the extent indicated above.

14. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge